92-1030

Supreme Court, U.S.
FILED
DEC 15 1992
OFFICE OF THE CLERK

No. .....

IN THE SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1992

ARTURO DIAZ-FLORES
Petitioner

VS.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOE HERNANDEZ
Counsel of Record
508 W. Concho
San Angelo, Texas 76903
(915) 658-5309
Counsel for Petitioner

QUESTION PRESENTED

Whether a federal District court is required to advise a non-citizen Defendant of the basic legal consequence of deportation upon accepting a plea of guilty when there is a clear and material involvement by the Immigration and Naturalization Service in the criminal proceedings and the fact that such deportation proceedings are to be instituted post conviction is clearly obvious and known to the trial court.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION..... 2

STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE WRIT 3

CONCLUSION 9

INDEX TO APPENDICES

APPENDIX A. Decision and Opinion of the Fifth Circuit of Appeals A-1

APPENDIX B. Decision and Order of the Board of Immigration Appeals B-1

APPENDIX C. Order of the Immigration Judge .. C-1

APPENDIX D. Pertinent Statutes Involved D-1

TABLE OF AUTHORITIES

Cases

Page

Ex parte Cervantes, 762, S.W.2d 577
(Tex. Cr. App. 1988) 8

Fong Haw Tan v. Phelan, 333 U.S. 6, 68
S. Cr. 374, 92 L.Ed. 433 (1954) 6

Lyons v. Pearce, 676 P. 2d 905 (Or. App.
1984) 6

Michel v. United States, 507 F. 2d 461
(2d. Cir. 1974) 4, 5, 7

Nq Fung Ho v. White, 259 U.S. 276,
42 S. Ct. 492, 66 L.Ed. 938 (1921) 6

Reyes v. State, 774 S.W. 2d 670
(Tex. App. - Houston [14th Dist.] 1989) 8

United States v. Parrino, 212 F. 2d 919
(2d. Cir.) cert. den. 348 U.S. 840, 75
S. Ct. 46, 99 L.Ed. 663 (1954) 6

United States v. Richardson, 483 F. 2d 516
(8th Cir. 1973) 5

United States v. Santelises, 476 F. 2d 787
(2d. Cir. 1973) 5

Rules

	Page
Federal Rules of Criminal Procedure, Rule 11, 18 U.S.C.A.	5, 8

Statutes

I.N.A. Sec. 106 (a), 8 U.S.C. Sec. 1105 (a) (a)	2
I.N.A. Sec. 212 (c), 8 U.S.C. Sec. 1182 (c)	2, 3
I.N.A. Sec. 241 (a) (13), 8 U.S.C. Sec. 1251 (a) (13)	2, 3
I.N.A. Sec. 242 (b), 8 U.S.C. Sec. 1252 (b)	2
I.N.A. Sec. 275, 8 U.S.C. Sec. 1325 (a)	2
Oregon Revised Statutes 135.385 (2) (d)	7
18 U.S.C. Sec. 2	2
28 U.S.C. Sec. 1254 (1)	2
Vernon's Ann. Texas C.C.P. art 26.13 (a) (4)	7

Regulations

8 C.F.R. 3.1 (b)	2

No. .....

IN THE SUPREME COURT
OF THE
UNITED STATES

October Term, 1992

ARTURO DIAZ-FLORES,
Petitioner

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, Arturo Diaz-Flores, (Petitioner or Flores) respectfully prays that a writ of certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit entered September 22, 1992.

OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit, a copy of which appears as Appendix A was not reported. The opinion of the board of Immigration Appeals (BIA or Board), was unreported and appears as Appendix B. The Order of the Immigration Judge (IJ), appears on Appendix C and was also not reported.

JURISDICTION

The Immigration and Naturalization Service (INS) based original jurisdiction in the Executive Office for Immigration Review, Office of the IJ upon Immigration and Nationality Act (ACT), Sec. 242 (b) which provides that a special inquiry officer shall conduct proceedings to determine the deportability of any alien.

The jurisdiction of the BIA is founded upon 8 C.F.R. 3.1 (b) which states that the Board has appellate jurisdiction in hearing and determining appeals from decisions of the IJ in deportation cases.

Jurisdiction of the Court of Appeals for the Fifth Circuit is founded upon Immigration and Nationality Act, Sec. 106 (a) which prescribes an exclusive remedy for the review of final deportation orders of deportation pursuant to administrative proceedings by direct petition to a United States Court of Appeals.

The jurisdiction of their court rests on 28 U.S.C. Sec. 1254 (1), since this is an action in which a court of Appeals has rendered a final judgment.

STATUTORY PROVISIONS INVOLVED

This case involves 8 U.S.C. Sec. 1325, 18 U.S.C. Sec. 2, Immigration and Nationality Act, Sec. 212 and Immigration and Nationality Act. Sec. 241, the pertinent portions of which are set forth in Appendix D.

STATEMENT OF THE CASE

Petitioner Flores, a lawful permanent resident, was convicted of aiding and abetting the Illegal Entry of Aliens into the United States in violation of Title 8, U.S.C. Sect. 1325 (a) and Title 18, U.S.C. Sect. 2. on April 19, 1990. Petitioner pleaded guilty to the two-count information, was convicted, and on May 14, 1990, received a sentence of three (3) months

confinement on Count One and a sentence of Three (3) years probation on count Two, to run consecutively to the sentence under Count One.

Thereafter, once Petitioner had served his confinement and was serving his sentence of probation, the INS instituted deportation proceedings against him under Section 241 (a) (13) of the ACT charging him as being subject to deportation for aiding and abetting, for gain, another alien to enter the United States in violation of law.

The IJ found Petitioner deportable and ineligible for the discretionary relief provided by Sect. 212 (c) of the ACT, and ordered him deported from the United States to Mexico and signed an order finding deportability on July 29, 1991. The Board affirmed, concluding that his deportability was established by proper evidence, that the IJ's order of deportation was proper and rejected Petitioner's claim that the deportation proceedings be terminated because he was not given any warnings as to the deportation consequences of his plea of guilty. The BIA entered its decision on January 15, 1992.

The United States Court of Appeals for the Fifth Circuit denied petitioner's petition for review of the order of the BIA and affirmed the decision of the BIA on September 22, 1992. Petitioner has taken the instant Petition for Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

This case presents special and important questions concerning the duty of a federal district court to advise a noncitizen defendant of the basic legal consequences of deportation when accepting a plea of guilty when the fact that deportation proceedings will ensue following conviction is known by the court. In this case these questions are squarely raised. We submit that its public importance is obvious, and that it was wrongly decided below.

The Court of Appeals has completely failed to address the issues of the very active involvement of the INS in the crimi-

nal proceedings and the high probability of deportation proceedings following said criminal proceedings. In cases such as Petitioner's, deportation following a plea of guilty is not merely a possibility it is a certainty and this certainty is well known to the trial court at the time of accepting a plea of guilty form a defendant with the same immigration status as Petitioner.

Petitioner does not allege that the federal courts should give him additional or special rights or that he be given special allowances. Petitioner is merely requesting that the trial court admonish him and others of similar status that his guilty plea carries with it the dangerous consequence of deportation, as is normally done in the courts of the different states of this country. This action would not place an undue burden on the trial court and would be of great benefit to an alien defendant in helping him to make an intelligent and knowing plea.

The Court of Appeals fell into error by confusing the problem in the present case with the problem presented when the trial court has no idea that deportation proceedings will follow a plea of guilty. In the present case, Petitioner contends that the trial court is clearly possessed of knowledge that deportation proceedings will be initiated soon after a plea of guilty.

This is not a case where the sentencing judge is required to anticipate the "multifarious peripheral contingencies" which may affect the defendant. *Michel v. United States,* 507 F.2d 461, 466 (2d Cir. 1974). This is a case where the presiding judge, the United States Attorney and the INS knew for certain that deportation proceedings would follow soon after Petitioner's conviction and sentencing.

In the United States District Court for the Northern District of Texas, San Angelo Division where this case arose the government relies on a joint and mutual process whereby the United States Attorneys' Office and the INS work together to first convict a Defendant with the same immigration status

such as Petitioner and to follow with the certain deportation of the Defendant as in this case.

Under Fed. Rules Crim. Proc. rule 11, the judge is required to inform a Defendant about the consequences of a Plea of Guilty, including the effect of any special parole or supervised release term, the fact that the court is required to consider any applicable sentencing guidelines but may depart form those guidelines under some circumstances, and, when applicable, that the Court may also order the Defendant to make restitution to any victim of the offense. Fed. Rules Crim. Proc. rule 11. All of these consequences are very serious and are likely to be of real significance to the Defendant. Likewise deportation is a serious sanction. See, e.g., *Michel*, 507 F. 2d at 465 citing *United States v. Santelises*, 476 F.2d 787, 790)2d Cir. 1973).

Petitioner submits that deportation like a special parole term or supervised release term spring out of a Pleas of guilty are therefore all direct consequences of the Pleas. The failure to advise a Defendant of the consequences of deportation where the circumstances exist as in the present case is just a s critical an error as to fail to advise a Defendant of the consequences of a special parole term. See *United States v. Richardson*, 483 F.2d 516, 518 (8th Cir. 1973), in which the court reversed a judgment of conviction because it was not clear that the Defendant had understood that a special parole term would be imposed upon him as a consequence of his plea of guilty.

In *Richardson*, the decision was based upon the fact that the record did not show that the Defendant had been adequately advised of the consequences of his plea by a reliable source and that he understood these consequences. 483 F. 2d at 519. Such is the situation in this case, there is a total absence of any type of admonishment concerning the consequence of deportation in the record. On their face, the applicable plea documents including the factual resume, the plea

agreement letter and the judgment are mute as to the consequence of deportation following the guilty plea.

In reality, the relevant plea documents are very deceiving in their totality, as to any reasonable person they give the appearance that the Government is really interested n helping Petitioner become a useful member of the community and to remain in the United States as said judgment even explicitly forbids Petitioner from traveling near the Mexico-Texas border. Clearly Petitioner was never advised of the consequence of deportation following his pleas and he thus completely failed to understand these consequences.

The question then, is whether, for an alien, deportation is a basic legal consequence. *Lyons v. Pearce*, 676 P. 2d 905, 910 (Or. App. 1984). There is no consequence more basic to an alien than deportation, which is the equivalent of banishment of exile. See *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10, S. Ct. 374, 376, 92 L.Ed. 433, (1954). As Judge Brandeis stated, it may result in loss "of all that makes life worth living." *Nq Fung Ho v. White,* 259 U.S. 276, 284, 42 S. Ct. 492, 495, 66 L. Ed. 938 (1921) (Brandeis, J.); *United States v. Parrino*, 212 F.2d 919, 924-925 (2d Cir.) (Frank, J., dissenting), cert. den. 348 U.S. 840, 75 S. Ct. 46, 99 L.Ed. 663 (1954).

"Deportation while not in reality criminal punishment may have far more serious direct effect on this defendant than his sentence of imprisonment for two years. For all practical purposes, the Court sentenced him to serve for two years in jail and the rest of his life in exile. For the Supreme Court has said that 'deportation is a drastic measure, at times the equivalent of banishment or exile' and 'is a penalty.' Mr. Justice Jackson has described it as a 'life sentence of banishment.' I cannot believe that no 'manifest injustice' exists merely because the sentence of banishment for life was not imposed directly by the judge." Judge Frank, dissenting in *Parrino*, supra, 212 F.2d at 924, a case where the Defendant faced the same problems of deportation following his guilty plea.

Actually more is involved in the present cased since deportation is automatic for the convicted Petitioner, due to the lack of discretionary relief and thus the consequence in direct and not collateral. See appellant's argument in *Michel, Supra*, 507 F.2d at 466.

Petitioner was under the impression that whatever custodial period of time and whatever probation term he received from the sentencing court was all that could happen to him and had Petitioner's attorney or the District Court properly advised him of the severe and certain consequence of deportation upon his plea of guilty Petitioner would not have pleaded guilty,

Further, the circumstances in the present case emphasize the gravity of the improper lack of procedure being practice against Petitioner because of his alien status in not being provided with essential and necessary information to allow him to properly enter a plea of guilty. A lack of due process which does not affect a citizen defendant facing similar charges.

This type of failure to warn the Petitioner of the consequence of deportation violates the entire spirit of fairness and quality upon which our judicial institutions are founded. The problem that Petitioner faces is faced by may similar Defendants in many similar cases now pending in state and federal courts. For this reason it is submitted that this case presents questions of public importance which merit review by this Court.

Prior to accepting the plea of guilty of Petitioner, the District Court should have admonished Petitioner of the fact that if Petitioner was not a citizen of the United States of America, his guilty plea for the offense charge could result in the very direct consequence of deportation as is done in the state courts of this country. See OREGON REVISED STATUTE 135.385 (2) (d); TEXAS CODE OF CRIMINAL PROCEDURE, Art. 26.13 (a) (4).

In *Ex parte Cervantes,* 762 S.W.2d, 577, 578 (Tex. Cr. App. 1988), Petitioner therein filed his writ of habeas corpus following his conviction for the offense of felony driving while intoxicated and sentence of five years in prison alleging that the trial Court failed to advise him that his plea of guilty could result in his deportation. The Court of Criminal Appeals of Texas noted that Petitioner had imminent deportation proceedings pending as a result of his conviction and that the trial court had the duty to substantially admonish Petitioner therein of the possibility of deportation.

The trial court has duty to admonish foreign defendant that guilty plea can result in deportation. *Reyes v. State*, 774 S.W.2d 670, 672 (Tex. App. - Houston [14th Dist.] 1989).

While these decisions are related to state criminal proceedings, the reasoning there is applicable to federal criminal proceedings. Now this time has come to enforce this reasoning and to require that the federal courts expressly advise an alien Defendant of the consequence of deportation.

Another fundamental reason for granting the writ, apart form the direct effect on Petitioner, lies in the fact that the issue is a continuing and growing one affecting a very large number of non-citizen defendants, who face deportation following their plea of guilty. In these circumstances, we believe that it is in the public interest that the matter be definitely resolved at the earliest possible time in a manner favorable to Petitioner and others of similar status.

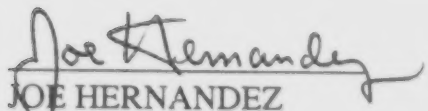
Accordingly, Petitioner contends that in light of these circumstances the deportation of Petitioner is a direct consequence of his guilty plea and is there fore within the mandate of Fed. Rules of Crim. Proc. rule 11, that the district court did not fully comply with Rule 11 in accepting Petitioner's plea of guilty as his decision to enter the plea was not made freely, voluntarily and with full knowledge of the consequences of said plea and that the Court of Appeals erred in affirming his deportability.

CONCLUSION

For the foregoing reasons, petitioner respectfully prays that a writ of certiorari should issue to review the Decision and Opinion of the United States Court of Appeals for the Fifth Circuit.

Dated: December 14, 1992.

Respectfully submitted,



JOE HERNANDEZ
Counsel of Record
508 W. Concho
San Angelo, Texas 76903
(915) 658-5309

Counsel for Petitioner

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 92-4147
Summary Calendar

ARTURO DIAZ- FLORES,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the Board of Immigration and Naturalization Service
(A39-289-618)

Before GARWOOD, JONES and EMILIO M. GARZA, Circuit Judges.*

PER CURIAM:

Petitioner Arturo Diaz-Flores (Flores) challenges the decision of the Board of Immigration Appeals (BIA) affirming his order of deportation. Flores, who entered the United States in February 1990 and is concededly not a United States citizen, was deported on

---

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

the basis of his May 14, 1990 conviction in the United States District court for the Northern District of Texas of the offense of aiding and abetting the entry into the United States of two illegal aliens. Flores does not question the fact or finality of this conviction, or that such a conviction is a proper basis for deportation. Rather, Flores' sole claim is that the conviction should be disregarded because, according to him, the guilty plea on which it was based was improper in that Flores was not advised of the immigration/deportation consequences of the plea, and the plea agreement impliedly contained a promise not to deport him and was hence breached by these deportation proceedings. We reject these contentions.

Flores does not claim, and there is nothing in the record to indicate, that his referenced conviction is not final or that he has ever mounted any challenge to it either by appeal, or by motion for new trial, or by proceedings under 28 U.S.C. 2255, or by writ of *coram nobis*, or otherwise, and accordingly the conviction in question remains valid and outstanding. We note that the instant deportation proceedings were initiated by show cause order of February 20, 1991, which was expressly based on the referenced conviction. The initial deportation hearing was held June 5, 1991, and was continued to July 21, 1991, and Flores, represented by counsel at those proceedings (as he was before the BIA and is before this Court), produced no evidence of the invalidity of the conviction, although he did reserve the right to appeal to the BIA on that basis.

Immigration proceedings are not the proper forum to collaterally attack a facially valid, final criminal conviction such as that here, and Flores' arguments in this respect are hence without merit as is established by our decisions in cases such as *Zinnanti v. INS*, 651 F.2d 420, 421 (5th Cir. 1981); *Okabe v. INS*, 671 F.2d 863, 865 (5th Cir. 1982); and *Brown v. INS*, 856 F.2d 728, 731 (5th Cir. 1988).

We note in passing that the copy of the plea agreement

furnished by Flores to the BIA in his appeal contains nothing that could be remotely constructed as a promise not to deport or anything of that kind; it states that the defendant understand "there is no agreement whatsoever concerning sentencing," and further states that "this is the total and complete agreement between the Defendant and the United States." Flores does not furnish a copy of any of the transcript of the proceedings at which his guilty plea was accepted or at which he was sentenced. Moreover, there is no requirement that an alien defendant be advised of the immigration consequences of his guilty plea before that plea may be properly accepted in federal court. See *United States v. Gavilan*, 761 F.2d 226, 228 (5th Cir. 1985). See also *United States v. Montove*, 891, F.2d 1273, 1292-93 (7th Cir. 1989); *Fruchtman v. Kenton*, 531 F.2d 946, 949 (9th Cir.); cert. denied, 429 U.S. 895 (1976).

Flores has shown no proper basis for disturbing the decision of the BIA. HIs petition for review is accordingly DENIED, and the decision of the BIA is AFFIRMED.

APPENDIX B

Decision of the Board of Immigration Appeals
U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

File: A39 289 618 - San Antonio Date: JAN 15, 1992

In re: ARTURO DIAZ-FLORES

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:
Joe Hernandez, Esquire
122 S. Irving
San Angelo, Texas 76903

ON BEHALF OF SERVICE:
Nancy A. Kryzanowski
General Attorney

CHARGE:
Order: Sec. 241 (a) (13), I&N Act
[8 U.S.C. 1251 (a) (13)] - Smuggling for gain

APPLICATIONS: None

ORDER:

PER CURIAM. In a summary decision dated July 29, 1991, an immigration judge found the respondent deportable as charged and ordered him deported from the United States to Mexico. The respondent has appealed from that decision.

The decision of the immigration judge is affirmed.

The respondent, a 35-year-old native and citizen of Mexico, entered the United States on February 19, 1990. At his deportation hearing on July 21, 1991, the respondent admitted the allegations in the Order to Show Cause issued on February 20, 1991, and conceded his deportability as charged, on the basis of his May 14, 1990, conviction in the United States District Court for the Northern District of Texas for the offense of aiding and abetting the entry into the United States of two illegal aliens (Tr. at 5). The respondent made no application for any form of relief from deportation.

On his Notice of Appeal and in his attached supporting statement, the respondent asserts that the deportation proceedings against him should be terminated because of a plea bargain agreement he entered into with the United States Attorney's Office with the knowledge of the Immigration and Naturalization Service, in the course of his prosecution for the smuggling offense. he alleges that it was his understanding that pursuant to such agreement, no further actions, whether criminal, civil, or administrative, including deportation proceedings, would be brought against him by the United States Attorney or by any Federal agency. however, such is not apparent from the certified photocopy of the plea agreement dated April 19, 1990, that is in the record.

We observe that matters related to any plea bargain agreement reached during the respondent's criminal prosecution for smuggling are entirely separate from the deportation proceedings against him before the immigration judge. The institution of an Order to Show Cause, is a matter of prosecutorial discretion. So long as the enforcement officials of the Service choose to initiate deportation proceedings against an alien and to prosecute those proceedings to a conclusion, the immigration judge and the Board must order deportation if the evidence supports a finding of deportability on the ground charged. See *Lopez-Telles v. INS*, 564 F.2d 1302 (9th Cir.

1977); Matter of Yazdani, 17 I&N Dec. 626 (BIA 1981); see also *Rodriquez-Gonzales v. INS*, 640 F.2d 1139 (9th Cir. 1981).

We there fore find, in light of the respondent's admissions and-concessions in this case, that his deportability was established by clear, convincing, and unequivocal evidence and that the immigration judge's deportation order was proper. See *Woodby v. INS*, 385 U.S. 276 (1966); see also *Matter of Guevara*, Interim Decision 3143 (BIA 1991); 9 C.F.R. 242.14 (a) (1191).

Accordingly, the appeal is dismissed.

/S/ MARY MAQUIRE DUNNE
FOR THE BOARD

APPENDIX C

U.S. Department of Justice
Executive Office for Immigration Review
Office of the Immigration Judge

File A 39 289 618

In the Matter of In Deportation Proceedings
Arturo DIAZ-Flores
Respondent.

Order of the
Immigration Judge

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the order to Show Cause.

Respondent has made no application for relief from deportation.

ORDER. It is ordered that respondent be deported from the United States to Mexico on the charge contained in the Order to Show Cause.

Copy of this decision has been served upon respondent and the Immigration and Naturalization Service.
Appeal: Waived (reserved)
due 08-08-91

Date: July 29, 1991

Place: SNA/TX

/S/ RICHARD F. BRODSKY
(Immigration Judge)

APPENDIX D

Immigration and Nationality Act, Sec. 212

(a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(31) Any alien who at any time shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation, and who are returning to a lawful unrelinquished domicile of seven consecutive years, may be admitted in the discretion of the Attorney General without regard to the provisions of paragraphs (1) through (25) and paragraphs (30) and (31) of subsection (a).

Immigration and Nationality Act. Sec. 241

(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

(13) Prior to, or at the time of any entry, or at any time within five years after any entry, shall have, knowingly and for gain, encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law.

8 U.S.C. Sec. 1325

(a) Any alien who enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under Title 18 or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under Title 18, or imprisoned not more than 2 years. or both.

18 U.S.C. Sec. 2

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of San Angelo, Tom Green County, Texas; I am over the age of eighteen years and not a party to the within action; my business address is 508 W. Concho, San Angelo, Texas 76903.

On December 14, 1992, I served the within Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit in re: "Arturo Diaz-Flores vs. Immigration and Naturalization Service" in the United States Supreme Court, October term, 1992, No. . . . . .

On the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at San Angelo, Texas, addressed as follows:

Philemina Jones, Esquire
Robert Kendall, Jr., Esquire
Office of Immigration Litigation
Civil Division
U.S. Dept. of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044,

And by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at San Angelo, Texas, addressed as follows:

Solicitor General
Department of Justice
Washington, D.C. 20530

All parties required to be served have been served.

I certify, under penalty of perjury, that the foregoing is true and correct.

Executed on December 14, 1992, at San Angelo, Texas.

Joe Hernandez

JOE HERNANDEZ